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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

TANYA GERSH,

Plaintiff,

vs.

ANDREW ANGLIN, publisher of the
Daily Stormer,

Defendant.

Cause No. CV-17-50-M-DLC-JCL

**BRIEF IN SUPPORT OF MOTION
TO STRIKE DEFENDANT'S
NOTICE OF SUPPLEMENTAL
AUTHORITY OR, IN THE
ALTERNATIVE, FOR LEAVE TO
RESPOND**

On June 4, 2018, Plaintiff Tanya Gersh submitted her response to Defendant Andrew Anglin's objections to the May 3rd findings and recommendations of Magistrate Judge Lynch, and the motion to dismiss was deemed submitted. Dkt. No. 98. On September 12, 2018, Defendant filed a Notice of Supplemental

Authority in which he cites *Nwanguma v. Trump*, No. 17-6290, 2018 WL 4323966 (6th Cir. Sept. 11, 2018). Based on this case, Defendant argues that a disclaimer against violence shields him from liability for substantially assisting his followers in the invasion of Plaintiff’s privacy. Dkt. No. 104.

Plaintiff asks that the Court strike this Notice because it does not present “pertinent and significant authority.” Alternatively, Plaintiff asks the Court for authorization to file a response.

ARGUMENT

Defendant’s Notice does not comply with the governing Local Rule because it does not cite “pertinent and significant” authority. Local Rule 7.4 allows a party to advise the Court if “pertinent and significant authority comes to a party’s notice” after briefing but before the Court issues a decision.

Nwanguma is a Sixth Circuit case analyzing then-candidate Trump’s civil liability under Kentucky’s incitement to riot penal statute for the assault of rally attendees by audience members after he told the audience “get ‘em out of here” followed by “don’t hurt ‘em.” No. 17-6290, 2018 WL 4323966. Erroneously applying the Sixth Circuit’s rationale that the defendant in that case could not be held responsible for violence when the plain meaning of his words discouraged violence, Defendant argues in his Notice that “[l]ike Candidate Trump, Mr. Anglin

made a . . . denunciation of threats and violence" and therefore, "Defendant's speech does not constitute incitement to unlawful action." Dkt. No. 104 at 3.

The problem with Defendant's argument is that Plaintiff does not allege incitement; she alleges substantial assistance. Defendant even acknowledges this fact on the pages of his brief cited in his Notice. *See* Dkt. No. 91 at 14 ("The Magistrate Judge . . . found that Plaintiff was not pursuing the incitement theory"). Therefore, the *Nwanguma* case is inapplicable and not pertinent.

Defendant has gone beyond providing this Court notice of supplemental authority and has instead presented an irrelevant case and argument. Thus, Plaintiff asks this Court to strike the Notice. Alternatively, Plaintiff asks the Court for authorization to file a response.

DATED this 21st of September, 2018.

By: /s/ John M. Morrison
John M. Morrison
MORRISON SHERWOOD WILSON DEOLA PLLP
Attorneys for Plaintiff

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(d)(2)(E) of Local Rules of Procedure for the District of Montana, I certify that the foregoing brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes, lengthy quotations, or indented material; and the word count calculated by Microsoft Word 2018 is not more than 384 words, excluding caption, certificates of service and compliance, table of contents, table of authorities and exhibit index.

DATED this 21st of September, 2018.

By: /s/ John M. Morrison
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